

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. REVISION CASE No.941 of 2017

A.P.Venkatesan

... Petitioner

Vs.

1. Sree Vasantha @ Vasantha Viswanathan

2. V.Pradeep Kumaran

3. V.Suresh Kumaran

4. Rajan

... Respondents

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records from the file of the Judicial Magistrate-II, Salem in CMP.No.311 of 2017 and to set aside the impugned order.

For Petitioner

: Mr.V.Sekar

For Respondents

: No appearance

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ORDER

This Criminal Revision case has been filed against the order passed by the learned Judicial Magistrate-II, Salem in CMP. No.311 of 2017 dated 07.06.2017.

2. The case of the petitioner is that, the petitioner acted as real estate broker between the second respondent and one G.T.P.Muthuraj. He further claimed that in respect of the property belonging to the second respondent, on an oral instructions, he fixed the said Muthuraj as prospective buyer and based on the instruction given by the second respondent, the petitioner had taken the prospective buyer to the land and it was inspected in his presence.

3. It is the further case of the petitioner that thereafter, the sale consideration was fixed and in the meanwhile, the petitioner was sick and he was hospitalized for two months. During the said period, sale has been effected and without paying the commission for the entire sale consideration, to the petitioner the land has been sold.

4. The main grievance of the petitioner is that he has been denied of his brokerage. According to the petitioner, the second

respondent has agreed to pay 2% of sale commission as broker fee.

5. It is the further case of the petitioner that, in order to deny the lawful claim of the petitioner, and in order to avoid payment of brokerage and cheat the petitioner, the second respondent, without the knowledge of the petitioner, sold the property to the buyer.

6. It is also the case of the petitioner that, when the petitioner came out from hospital after recovering from illness, and on coming to know about the transactions, he approached the second respondent and requested payment of the sale commission.

7. According to the petitioner, when he made his rightful claim, it was not only neglected by the second respondent but he was also threatened by the other respondents. Therefore, the petitioner left with no other option except to file criminal complaint before the Superintendent of Police concerned.

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8. Since the said complaint was not acted upon, the petitioner had approached the concerned Magistrate Court and filed a private complaint under section 200 of Criminal Procedure Code (in short "the

Code").

9. The said complaint filed under section 200 of the Code having been considered by the learned Magistrate, was rejected by way of the impugned order dated 07.06.2017. Challenging the same, present revision has been filed.

10. Mr.V.Sekar, learned counsel for the petitioner submits that, it is true that the petitioner acted as broker between the second respondent and the buyers, and it was agreed upon between the petitioner and the second respondent, that, if the sale is materialized, 2% of sale commission would be paid to him. Only believing the said words, the petitioner convinced the buyers to buy the property belonging to the second respondent.

11. Since the sale was completed, it is the duty of the second respondent to pay the agreed commission to the petitioner. Since, the sale commission comes to Rs.52,00,000/- [(sale consideration being Rs.26,00,00,000/- (Rupees Twenty six crores only)], the second respondent, in order to defeat the lawful claim of the petitioner, has not only refused to pay the same but also threatened the petitioner,

when the same was questioned by him.

12. The learned counsel for the petitioner would also submit that, on plain reading of the complaint, it is evident that the second respondent has acted clandestinely knowing very well that the petitioner was hospitalized and in order to defeat his lawful claim of broker fee, he had sold the land to the buyers. The act of the second respondent clearly attracts the offence punishable under section 420 of IPC and only in that context, when the complaint given to the police, it was not taken into account, hence the petitioner, having no other option, than to invoke the provisions of the Code had filed private complaint before the Magistrate concerned.

13. The learned counsel appearing for the petitioner in order to substantiate the said submission, has also relied upon the judgment of the ***Lucknow Bench of Allahabad High Court, in Criminal MP. No.3778 of 2012 dated 23.09.2017 in the matter of Jagannath Verma & others Versus State of U.P. and another.***

14. The learned counsel has relied upon the following para of the said judgment, which is extracted hereunder:

"To expect a complainant who suffers from grave social disabilities occasioned by the widespread societal discrimination on grounds of gender and caste, which prevail in our society more than six decades after independence, to effectively prosecute a complaint before the magistrate under Chapter XV of the code, would be to shut our eyes to social reality. The well settled distinction between a police investigation falling within the ambit and purview of Chapter XII and an enquiry of investigation ordered by the magistrate under section 202 have already been noticed earlier following the decision of the Supreme Court in Devarapalli Lakshminarayana Reddy (Supra). The power of the magistrate under section 202 to postpone the issuance of process and to direct an investigation to be made by a police officer for the purpose of deciding whether or not there is sufficient ground for proceeding, is distinct from an order under section 156(3). This distinction is part of the well settled principle of our law. Hence, in our view, where an order is passed by the magistrate declining to order an investigation under section 156(3), such an order affects the valuable rights of the complainant and is a matter of moment. Access to the remedy of a revision under section 397(1) is not barred since such an order is not an interlocutory order under sub-section(2). Nor can access to statutory remedy of a revision under Section 397(1) be defeated on the ground that the complainant may avail of the procedure prescribed in Chapter XV of the code."

15. The learned counsel for the petitioner has relied upon a CD containing the conversation said to have taken place between the petitioner and respondent and one Ravi. The said Ravi, according to the petitioner, was a tenant under respondent 1 to 3 and when he was

contacted by the petitioner, he is claimed to have stated that he had received certain amount for vacating the land. Therefore as a broker, the petitioner should have been paid the brokerage as compensation given to one Ravi. Therefore, the said factor since known to the said Ravi, it is claimed by the petitioner, that the said Ravi would come and depose in his favour.

16. The learned counsel appearing for the petitioner would submit that there is a prima facie case to investigate the complaint given by the petitioner as against the second respondent and other respondents to prove the commission of offence punishable under section 420 of IPC.

17. Therefore, the learned counsel would submit that the rejection on the part of the Magistrate concerned through the impugned order, citing reason that, the issue is civil in nature and therefore no criminal complaint could be maintained, is totally not justifiable, and unsustainable and therefore, the learned counsel for the petitioner submits that this revision has to be entertained.

18. I have heard the learned counsel for the petitioner and have

perused the materials placed before this Court for consideration.

19. It may be true that the petitioner might have acted as real estate broker between the second respondent and the buyer. It may also be true that the second respondent might have agreed to pay 2% commission to the petitioner. It may be also true that due to the efforts taken by the petitioner, the prospective buyers had come forward to purchase the property from the second respondent. But these factors, in the opinion of this Court, would not constitute an offence and for which criminal case against the second respondent can not be filed for having allegedly not paid the sale commission, as agreed to, between the parties.

20. Even in respect of the alleged conversation said to have been made between the petitioner and other persons, the same if it is true, it can be utilized as a piece of evidence before the concerned Civil Court, when the petitioner makes any claim against the second respondent, to seek recovery of the brokerage.

21. All these aspects would go to show that the petitioner has not approached the court below by making out a case, atleast, prima

facie, to constitute an offence punishable under section 420 of IPC.

22. Therefore, this court is of the considered view that the court below has considered the issue properly and accordingly, rejected the claim of the petitioner.

23. Therefore, I am of the considered view that the order impugned is totally sustainable and there is no plausible reason to interfere with the said order. Accordingly the revision fails and it is therefore dismissed.

17.07.2017

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To

1. The learned Judicial Magistrate-II,
Salem.

2. The Public Prosecutor
High Court, Madras-104.

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R.SURESH KUMAR, J.

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